IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.703 OF 2007

WITH

NOTICE OF MOTION NO.981 OF 2007

Zephyr Toymakers Pvt.Ltd. ...Plaintiff

Versus

M/s.Chiranjiv Industries & Anr. ...Defendants

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Mr.V.R.Dhond with Mr.B.Chakrapani i/b M/s.Shantilal & Co. for Plaintiff.

Mr.Salil Shah i/b M/s.Gararia & Co. for Defendants.

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CORAM: A.M.KHANWILKAR, J.

APRIL 24, 2007.

P.C.

1. Defendants are inviting decree in terms of prayer clauses (a) to (d) on admission. Defendants are present in Court. Accordingly, by consent, the Suit is decreed in terms of prayer clause (a) to (d).

2. The Plaintiff, however, insists that decree in terms of prayer clause (e) of the Plaint should also be passed. Counsel for the Defendants states on instructions that the drawings, works, plates, dies, cartons, boxes, blocks and moulds in the custody, control, power and possession of the Defendants in respect of infringing items are non-existant, as the Defendants have discontinued production thereof. There is no reason to doubt the correctness of this statement. This statement is accepted. Counsel for the Defendants also submits on instructions that there is no existing stock of the infringing items pending with the Defendants or under their control in any manner. If it is so, question of granting relief in terms of prayer clause (e) does not arise.

3. It will be, however, open to the Plaintiff to take recourse to appropriate remedy, in the event, the Plaintiff is in a position to establish that the statement made by the Defendants as recorded earlier, is incorrect or has been breached hereafter. Those questions are left open.

4. Suit as well as all derivative proceedings including the Notice of Motion stand disposed of on the above terms.

5. Refund as per rules.

A.M.KHANWILKAR, J.